

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

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2002 SEP 17 P 1:16

In re:) PACA Docket No. D-02-0012
Turbeville Food Products)
Corporation,)
Respondent) Decision Without Hearing by Reason
of Consent

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This is a disciplinary proceeding under the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. § 499a et seq.) (PACA), instituted by a Notice to Show Cause and Complaint filed on March 21, 2002, by the Associate Deputy Administrator, Fruit and Vegetable Programs, Agricultural Marketing Service, United States Department of Agriculture.

In the Notice to Show Cause and Complaint, Complainant alleged that, during the period January 22, 2002, through January 30, 2002, Respondent violated section 2(4) of the PACA (7 U.S.C. § 499b(4)) by making, for a fraudulent purpose, false or misleading statements in connection with transactions involving perishable agricultural commodities received in interstate commerce, in that Respondent sold and shipped three lots of frozen vegetables, constituting perishable agricultural commodities, in interstate commerce to Central State Hospital (hereinafter often referred to as "Central"), Milledgeville, Georgia. Central had informed Respondent that federal inspection certificates were required as a condition to Central's acceptance of the commodities. In connection with the three lots of frozen vegetables, Respondent provided Central with five purported federal inspection certificates, which in actuality were not federal inspection certificates and were not created by a federal inspector. Complainant sought a sanction of the issuance of an order finding Respondent to have committed willful, flagrant and repeated violations of the PACA, and directing publication of that finding. Complainant also

sought an order refusing Respondent's February 19, 2002, application for a PACA license, based on a determination that Respondent had engaged in practices of a character prohibited by the PACA.

A copy of the complaint and notice to show cause was served upon Respondent, which filed an answer, responding that it did commit a violation of the PACA and "we plead NO CONTEST to this allegation" but denying that the violation was willful and flagrant. Respondent asserted that it did not desire an oral hearing. In a letter to Complainant dated August 5, 2002, Respondent withdrew its application for a PACA license.

The parties have now agreed to the entry of a Decision Without Hearing by Reason of Consent as set forth herein. Therefore, this Decision Without Hearing by Reason of Consent is entered without further procedure or hearing pursuant to the consent decision provisions of the Rules of Practice applicable to this proceeding (7 C.F.R. § 1.138).

Findings of Fact

1. Turbeville Food Products Corporation (hereinafter referred to as "Respondent"), is a Florida corporation with a business mailing address of 7405 Temple Terrace Hyway, Suite A, Tampa, Florida 33637.
2. At all times material herein, Respondent was not licensed under the PACA but operated subject to the PACA.
3. During the period January 22, 2002, through January 30, 2002, Respondent made, for a fraudulent purpose, false or misleading statements in connection with transactions involving perishable agricultural commodities received in interstate commerce, in that Respondent sold and shipped three lots of frozen vegetables, constituting perishable agricultural commodities, in

interstate commerce to Central State Hospital, which had informed Respondent that federal inspection certificates were required as a condition to Central's acceptance of the commodities. In connection with the three lots of frozen vegetables, Respondent provided Central with five purported federal inspection certificates, which in actuality were not federal inspection certificates and were not created by a federal inspector.

4. On February 19, 2002, Respondent submitted a completed application for a PACA license. The license was withheld, pending hearing, based on Complainant's determination that Respondent had engaged in practices of a character prohibited by the PACA. In a letter to Complainant dated August 5, 2002, Respondent withdrew its application for a PACA license.

Conclusions

Respondent's actions, as set forth in Finding of Fact 3 above, constitute willful, flagrant and repeated violations of section 2(4) of the PACA (7 U.S.C. § 499b(4)).

Order

Respondent is found to have committed willful, flagrant and repeated violations of section 2(4) of the PACA (7 U.S.C. § 499b(4)), and such finding is ordered published.

As Respondent's February 19, 2002, application for a PACA license has been withdrawn, Complainant's Notice to Show Cause is hereby dismissed without prejudice.

This order shall become final upon issuance. Copies of this order shall be served upon the parties.

Done at Washington, D.C.

this 17th of September, 2002

Donna G. Baler
Administrative Law Judge

For Respondent

Ernest Turbeville
President, Turbeville Food Products
Corporation

For Complainant

Eric H. Brown
Associate Deputy Administrator
Fruit and Vegetable Programs, AMS

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